upon to decide whether the people had best be omitted in the legislative or judiciary department, I would say it is better to leave the matter in the legislative. The execution of the laws is more important than the making of them."

If the theory of democracy thus demanded that the people through the juries should take an active part in the administration of law, American jurors were not slow to put the theory into practice. It was well nigh impossible for the courts to disregard the people's part in the execution of the laws when the foreman of the jury, toughened by the frontier scepticism, returned and announced to the judge that the jury wants to know whether what you told us when we first went out was really law or whether it was only just your notion.

That, in fact, is sort of a history of the background, that the jurors actually did decide such things as admissibility of evidence, or constitutionality of statutes. As a matter of fact, John Adams, in quoting and approving this rule, made a statement that the general rules of law and the common regulations of society under which ordinary transactions arrange themselves are well enough known by their jurors. The great principles of the Constitution are intimately known. They are sensibly felt by everyone. It is scarcely extravagant to say they are drawn in or imbibed with the nurse's milk and fresh air.

However, the Supreme Court at one time approved the rule, and development of this rule was very interesting because it is a fight between the people's interest in their awe and the power of the judge's desire for orderly administration of the courts. Some of the cases are fascinating.

For instance, one court was calling this the most fundamental right of all American citizens, and twenty years later it was calling it an archaic, ridiculous, outmoded kind of justice.

It has been a fight between the people and the courts, but apparently Maryland is the only state with the exception of Indiana which has also restricted the right, and we did fairly recently restrict the right. The major objections to this right have been eliminated where the judges in criminal cases are now allowed to determine the sufficiency of evidence.

Prior to that time the judges were unable to establish a real criminal law in Maryland because a case could go to the jury without any evidence at all. It was up to the juries alone to determine what the law was so the practice now really boils down to this: a judge cannot direct a verdict even though the evidence is uncontradicted, overwhelming, but that jurors in this State may find a verdict of guilty or innocent. Therefore, they do, in fact, have the power to disregard the judge's instructions.

The question then becomes, do they have the right. When this point was debated in 1851 or 1867, I do not remember which one, the reason it was put in was to bring a uniform practice throughout the State because in some parts of the State the jurors actually ruled on questions of evidence.

Therefore, what they wanted to do was to make a uniform practice throughout the State so they debated whether to follow the English common law or the Libel Act. When the United States Congress was debating the same issue it decided that this provision is really irrelevant because the practice in Maryland is clearer today because it is in our Constitution.

Now, as a practical matter, there are two cases, one case involving a murder where the defendant committed arson and in the course of the arson, he burned a woman in a house. It is *Green* v. *United States*. It is a very interesting case. In that case, under the District of Columbia law, they have the felony-murder rule. We have the same rule in this State. That is, if in the course of a felony — a felony being arson, rape, robbery, burglary, those crimes of common law which we call felonies — somebody dies, even though he had little connection with it, it is first degree murder. In this Green case, the defendant, an old man, I believe about sixty years old, was found guilty of first degree or second degree murder. He appealed. He said he could only be found guilty of first degree murder because of the felony murder rule. The Court of Appeals agreed. When he went back for retrial, he raised double jeopardy claiming he had been acquitted in the prior trial of first degree murder and, therefore, could not be tried again, and he walked out of the courtroom.

Under present practices in Maryland, this cannot occur because juries quite often bring in inconsistent verdicts. In Prince George's County, in a very famous recent trial, the Hargus case, a woman killed four of her children. The only defense was insanity. The facts were clearly first degree murder under definition of the court.